

THIS DISPOSITION IS NOT  
CITABLE AS PRECEDENT OF THE TTAB MARCH 31,99

U.S. DEPARTMENT OF COMMERCE  
PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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ADT Services, Inc. substituted for ADT Security Systems,  
Inc.

v.

Safe Link Corporation

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Opposition No. 98,096  
to application Serial No. 74/516,920  
filed on April 25, 1994.

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Glenn Mitchell of Fross, Zelnick, Lehrman & Zissu, P.C. for  
ADT Services, Inc. substituted for ADT Security Systems,  
Inc.

Timothy M. Barnett of Winthrop & Weinstein, P.A. for Safe  
Link Corporation.

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Before Simms, Cissel and Hairston, Administrative Trademark  
Judges.

Opinion by Simms, Administrative Trademark Judge:

ADT Services, Inc. (opposer) has opposed the  
application of Safe Link Corporation (applicant), a  
Minnesota corporation, to register the mark shown below

for services identified as "operation of long range radio networks to transmit signals for the benefit of the security monitoring industry."<sup>1</sup> In the notice of opposition, opposer asserts that it offers and sells security equipment and services under the marks SAFEWATCH and CUSTOMER LINK, and security equipment for transmitting security signals over standard data communications networks, and supervised leased-line type security for transmitted security signals over standard data communications networks under the mark SIGNALINK. Opposer asserts ownership of six federal registrations covering these marks and contends that applicant's mark, SAFE LINK and design, so resembles opposer's previously used and registered marks as to be likely to cause confusion, to cause mistake or to deceive.

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<sup>1</sup> Application Serial No. 74/516,920, filed April 25, 1994, claiming use in commerce since December 5, 1993.

In its answer, applicant has denied the essential allegations of the notice of opposition and has asserted a general affirmative defense of waiver, estoppel, acquiescence and/or laches. Applicant has also asserted the "affirmative defense" that the words "safe" and "link" are common in the communications and security fields and cannot be distinctive of opposer's goods and services.

The record of this case consists of testimony (and exhibits) taken by each party; copies of opposer's pleaded registrations and portions of various printed publications relied upon by opposer's notice of reliance; copies of third-party registrations, portions of printed publications and dictionary definitions, all relied upon by applicant's notice of reliance; and the application file. The parties have submitted briefs but no oral hearing was requested.<sup>2</sup>

#### Opposer's Record

Opposer's SAFEWATCH registrations cover security services monitoring fire, intruders, burglars and hold-ups; and security systems, namely, alarm transmitters, intrusion detectors, and fire and smoke detectors, as well as smoke and fire alarms. Its CUSTOMER LINK registration covers

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<sup>2</sup> In its brief, opposer asks us to exclude the third-party registrations submitted by applicant because they are not certified status and title copies of those registrations. It is not necessary that copies of third-party registrations submitted with a notice of reliance be certified, nor need they be current status and title copies prepared by this Office. Plain copies of the registrations, or the electronic equivalent thereof, are all

installation and maintenance of burglar and fire alarms and security monitoring systems; the transmission of information concerning the operation and monitoring of those systems; and burglar and fire alarm and security system monitoring services. Finally, opposer's SIGNALINK registrations cover line-type security apparatus for transmitting security signals over standard data communication networks; and providing supervised leased-line type security for transmitted security signals over standard data communication networks. All of these registrations are valid and subsisting and owned by opposer.

Opposer took the testimony of Mr. Bernard Worst, its Director of Engineering, and Mr. Joseph Tedesco, its Director of Systems Integration. Among other things, opposer provides equipment and monitoring services to monitor households for fire and break-ins. Opposer's systems include sensors, alarm panels, control panels and monitoring computers.

Before discussing opposer's residential and commercial products and services, and the marks used in connection with those products and services, we shall briefly discuss some features which may be common to all of opposer's residential and commercial property protection services. These features are the means of communication from the protected premises

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that is required. In re Smith and Mehaffey, 31 USPQ2d 1531 (TTAB

to the central monitoring station. This communication may be accomplished in several different ways. One common means is digital communication over public switched telephone network. Another means of communication from a protected premises to a monitoring station is by cellular phone technology. A third means of communication is called long-range radio frequency (RF) via a private radio network. Finally, a fourth means of communication is commercial packet radio, which opposer is now using.

Since the early 1980s, opposer has been offering the SAFEWATCH home security alarm system. This system consists of door contacts, control panels and user keypads, all located on the premises of the residence being protected. The sensors communicate with the control panel either by hard-wire communication or by means of short-range radio transmissions, so-called internal or wireless communication. The short-range radio transmission between door and window sensors and the control panel at the protected property should be distinguished from the long-range radio frequency communication from the protected premises to the central monitoring station. Opposer also offers monitoring services under the mark SAFEWATCH as a part of its residential home security system. Although long-range radio frequency may be used in home security systems to communicate between the

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1994) and Weyerhaeuser Co. v. Katz, 24 USPQ2d 1230 (TTAB 1992).

protected property and the central monitoring station, according to opposer's testimony, direct telephone network communication is the primary means for this communication, although the cellular phone technology may be used at the request of the customer. Worst dep., 64, 67-68. Opposer has approximately 1.4 million customers using this residential home security system, and over 100,000 customers per year are added. Opposer promotes its SAFEWATCH products and services by direct mail, flyers, print advertisements, and by radio and television. There is generally a one-time charge for installation as well as a monthly charge for monitoring. Worst dep., 79. Although the SAFEWATCH system has been sold to some businesses, it is primarily targeted to residential customers. Tedesco dep., 149.

Opposer offers its SIGNALINK and CUSTOMER LINK services to large commercial customers. Both of these services have been offered since the late 1980s or early '90s. The SIGNALINK services protect very large banks and very large retailers by connecting remote branches to a central monitoring point by leased telephone lines. Mr. Worst testified that cellular phone connections or long-range radio frequency communication could be used for these services. Worst dep., 83. The SIGNALINK services cost thousands of dollars. Currently, there are between 2,000 and 2,500 remote sites where SIGNALINK services are

rendered. Mr. Worst testified, at 76, that the SIGNALINK mark is not used in the same literature as opposer uses to promote its SAFEWATCH residential home security products and services, and Mr. Worst is aware of no SIGNALINK customer who has purchased a SAFEWATCH system for its business.

By means of opposer's CUSTOMER LINK services, large banks and retailers are able to transfer information such as activity reports, opening and closing reports, etc., from various branches to a central monitoring station. Like opposer's SIGNALINK services, opposer's CUSTOMER LINK services cost several thousand dollars. Opposer has no promotional literature that uses both the marks CUSTOMER LINK and SAFEWATCH together. Worst dep., 82. Opposer has between 4,500 and 5,000 customers using the CUSTOMER LINK services. Tedesco dep., 144.

Mr. Worst testified that, to the extent that opposer may use long-range radio frequency communication, such communication or service is not operated by opposer, but rather by a third party. Worst dep., 83, 99, 111, and Tedesco dep., 162. If long-range radio frequency is used, opposer purchases this service from a third party and offers it to the customer.

Opposer's SIGNALINK and CUSTOMER LINK services are promoted at trade shows aimed at banks and retailers.

Although applicant's questions on cross-examination were objected to on the grounds that they were beyond the scope of the direct testimony, opposer's witnesses did testify that they were aware of various third-party marks such as SAFETY NET for a commercial radio system, SAFECOM used in connection with a radio frequency product, and SAFEHOUSE used in connection with a security system similar to opposer's. Opposer's witnesses had never encountered applicant's SAFE LINK services.

With respect to any long-range radio frequency system, opposer's testimony is to the effect that such a service acts as a backup in case of the loss of direct telephone service. Further, opposer's promotional literature, according to the testimony, does not contain any information concerning long-range radio frequency communication. Worst dep., 72.

#### Applicant's Record

Applicant took the testimony of its president, Dennis Gross. Applicant operates long-range radio networks for use by the security monitoring industry (alarm companies).<sup>3</sup> Applicant's services are effectuated by the placement of a radio transmitter at a subscriber's premise (home or business with an alarm system). The radio transmitter emits

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<sup>3</sup> Applicant also markets radio networks for use by alarm companies. However, the instant application relates only to services rather than these goods.



a signal which is picked up by one or more repeater sites for ultimate transmission to a monitoring center. Although opposer is not one of applicant's customers, applicant does sell to alarm companies and independent dealers which install, service and monitor alarm systems. Applicant also offers its services to some central stations that monitor alarm systems. The eventual end users or beneficiaries of applicant's services are residential and commercial customers, although applicant itself does not communicate directly with those end users. Applicant offers its services at trade shows geared toward alarm companies.

With respect to the relationship between alarm companies and companies offering long-range radio transmission services, Mr. Gross testified, at 32, 92 and 107:

- Q. Do you have any knowledge as to whether the alarm companies would be likely or unlikely to utilize Safe Link's name in [their] marketing materials?
- A. In some cases, if they use the material directly, they may contain the Safe Link name, but our experience is that the alarm companies are trying to build their own image in the community, and if it's there, they don't really push it.
- Q. And they fold your services into their own and simply market under their own name; is that correct?

A. Typically, that's been our experience.

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A ...What we found with this [pamphlet] is the fact that the majority of the quantity that we ordered is still sitting on shelves in our office, is that we thought alarm companies were going to need a lot of help in marketing, as I suggested before, and as it turns out, they haven't really wanted that help.

\* \* \* \* \*

A. These were never intended to be used by Safe Link -- Safe Link has never intended to communicate directly with end users. Again, we've always felt like the alarm company needed help in communicating the idea of phone line vulnerability and the need to provide a backup system to the customers, and these were designed to help the alarm company do that.

Q. You said you've always felt that way. Has your opinion changed in that respect?

A. Well, it's changed to the extent that very few of the alarm companies have taken us up on our offer. In fact, of the alarm companies which we have sold networks to, none of them have requested any of this material.

Mr. Gross also testified that applicant does not make alarm products or security systems. Further, according to Mr. Gross, there have been no instances of actual confusion. With respect to third-party use, Mr. Gross testified that he

is aware of the use of the following marks: SAFETY NET for a competitive long-range radio network; Security Link, the name of an alarm company; SAFECOM for a long-range radio network; FAST LINK for a long-range radio network; and FEEL SAFE, used by an alarm company to market its product.

Arguments of the Parties

Opposer argues that confusion is likely when applicant's mark is compared separately and with opposer's marks as a group. Opposer contends that it has promoted its SAFEWATCH, CUSTOMER LINK and SIGNALINK marks together, such that its commercial customers are exposed to the SAFEWATCH mark used in connection with its residential security systems. Opposer maintains that its SAFEWATCH mark is a famous one in the security and monitoring industry and that its other marks, CUSTOMER LINK and SIGNALINK, are strong marks in that industry. With respect to the services, opposer maintains that applicant's services are one element of an integrated security system, typically a backup method of communication, which type of communication is also available to opposer's SAFEWATCH customers. Opposer maintains that applicant's services are used to accomplish the same task that is performed by opposer's security products and services, and applicant's services could be used with opposer's products and services. That is to say, opposer's security systems are available with the same type

of radio transmission backup system as that offered by applicant. Opposer points out that applicant even prepares literature for distribution to the ultimate residential consumers of security systems. Opposer argues that both parties offer services that are ultimately purchased by the same customers -- users of security products and services. Opposer also maintains that the parties use similar channels of trade (trade shows) in which to distribute their goods and services, albeit that the trade shows are different ones. Concerning some of the evidence of third-party use, opposer maintains that its objections (beyond the scope of direct examination) to applicant's questions to opposer's witnesses concerning knowledge of third-party trademarks containing either SAFE or LINK were proper.<sup>4</sup> Moreover, opposer argues that there is no evidence of the impact of these third-party marks on the marketplace. Because the parties' services may be used by the same end users, some of whom may be relatively unsophisticated homeowners, and because applicant's mark combines portions of opposer's marks, confusion is likely, according to opposer.

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<sup>4</sup> Because the existence of third-party marks may have a bearing on the strength or distinctiveness of opposer's marks, we have considered this testimony. We note that applicant's witness has also testified about third-party uses. However, we have given little weight to the existence of these marks in our analysis because of the lack of evidence about the nature and extent of their use.

Applicant, on the other hand, argues that the respective marks must be compared separately because opposer does not use them together; that no consumer can combine applicant's services with opposer's security system; and that any radio transmission backup services which opposer uses are actually provided by third parties. Concerning the strength of opposer's marks, it is applicant's position that the house mark ADT is the strong mark, not the other marks which opposer relies upon.

Discussion

Priority is not an issue in this case in view of opposer's valid and subsisting registrations. *King Candy Co. v. Eunice King's Kitchen*, 496 F.2d 1400, 182 USPQ 108 (CCPA 1974). In any event, this record establishes opposer's priority.

While opposer has argued that its SAFEWATCH goods and services are promoted with its CUSTOMER LINK and SIGNALINK goods and services, this record does not establish any significant common promotional effort. We do not have a situation, therefore, where the SAFEWATCH products and services are typically used on similar or complementary goods and services rendered under the different marks CUSTOMER LINK and SIGNALINK. If such were the case, customers might come to associate these different marks with the same entity. We note that, even if the marks were used

together (and this record does not support that conclusion), the common customers would be large corporate clients such as banks or retail companies.

Although opposer has alleged that its mark SAFEWATCH is famous, the record does not support that conclusion. While this mark is mentioned in the articles of record, along with the more well-known mark and trade name ADT, we do not believe that this publicity and the evidence of sales is sufficient support for a determination of fame.

Applicant's services are offered only to alarm companies ("the security monitoring industry," according to the description of applicant's services), relatively sophisticated customers. Even though applicant has prepared material that an end user, such as a homeowner, might see, applicant's long-range radio frequency services are offered and sold only to alarm companies, independent dealers and to central monitoring stations. In other words, applicant's customers appear to be competitors of opposer and not customers of opposer. Even assuming that a SAFEWATCH residential customer of opposer encounters applicant's SAFE LINK and design mark in connection with a backup communication service used as a part of a security monitoring system, those marks, we believe, are sufficiently different that confusion would be unlikely. They have significant differences in sound, appearance and meaning.

And, if large commercial customers of opposer's CUSTOMER LINK and SIGNALINK services were to encounter applicant's SAFE LINK long-range radio frequency services, those sophisticated commercial consumers would be likely to distinguish the marks and the source of those services. Accordingly, because applicant's mark and services are sufficiently different, we find confusion to be unlikely.

Decision: The opposition is dismissed.

R. L. Simms

R. F. Cissel

P. T. Hairston  
Administrative Trademarks  
Judges, Trademark Trial  
and Appeal Board